



the Court of Common Pleas of Montgomery County, Pennsylvania, Docket No.

CP-46-CR-007314-2012. Id. at 2. On August 23, 2013, the Honorable William R. Carpenter sentenced Petitioner to a term of incarceration eleven to twenty-three months followed by two years of probation. Petitioner's claims are:

GROUND ONE: Ineffective assistance of counsel/ violations of PA rules of Professional Conduct/ VI Amendment violations/ 14<sup>th</sup> Amendment violations/ 8<sup>th</sup> Amendment violations/ 4<sup>th</sup> Amendment violations/ V Amendment violations re: due process

GROUND TWO: Abuse of discretion/ Bill of Rights/ Civil liberty violations/ 14<sup>th</sup> Amendment violations/ civil rights violations

GROUND THREE: Speedy Trial/ Prompt Trial Violations/ Bill of Rights/ Civil liberty violations/ 14<sup>th</sup> Amendment violations/ civil rights violations

GROUND FOUR: Procedural (error)/ Defense Civil rights violations/ Civil liberty violations/ Commonwealth's failure to hear defendant's motions to have rule 600 hearings

Pet., pp. 3-6. To the standard form Petition, Petitioner attaches fifteen pages labeled "Grounds and Supporting Facts," ten pages labeled "Amendment," and twelve pages labeled "Memorandum of Law." A review of the standard form Petition, the claims asserted in the Petition and the miscellaneous attachments to that Petition show that Petitioner has confusingly mixed the claims based on proceedings related to his guilty plea and sentencing in the Montgomery County case with another case pending in the Court of Common Pleas for Philadelphia County, No. CP-51-CR-0005598-2011, for which Petitioner is currently a pre-trial detainee.

District Courts may dismiss habeas petitions where it is apparent from the face of the petition that the petitioner is not entitled to relief. Azille v. Pennsylvania, Civ.A. No. 13-5446, 2014 WL 1608667, at \*2 (E.D. Pa. Apr. 21, 2014)(citing Lonchar v. Thomas, 517 U.S.

314, 320, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996) and Siers v. Ryan, 773 F.2d 37, 45 (3d Cir.1985)). No response is needed to the Petition because it plainly appears from the Petition and a review of the state court criminal dockets that no relief is warranted to Petitioner at this time. Id. (citing 28 U.S.C. § 2254 Rule 4 (no response is required if “it plainly appears from the petition and any attached exhibits that petitioner is not entitled to relief . . .”). Having reviewed the Petition and its attachments, Criminal Docket No. CP-46-CR-007314-2012 and Criminal Docket No. CP-51-CR-0005598-2011, we offer this Report and Recommendation.

**A. Criminal Docket No. CP-46-CR-007314-2012.**

In the aggravated assault conviction in the Court of Common Pleas of Montgomery County, Criminal Docket No. CP-46-CR-007314-2012, Petitioner has not satisfied the exhaustion requirement by presenting his claims through one full round of the state’s appellate process. Petitioner’s guilty plea and sentencing took place on August 23, 2013. On February 26, 2014, Petitioner filed a pro se petition for collateral review under the Pennsylvania Post Conviction Relief Act (“PCRA”), 42 Pa. C.S.A, § 9541, et seq. On May 14, 2014, Michael P. Gottlieb, Esquire, was appointed to represent Petitioner and Attorney Gottlieb entered his appearance on petitioner’s behalf on May 22, 2014. No briefing or hearing schedule has been set for the PCRA proceedings. Thus, Petitioner has not yet exhausted any claims related to his aggravated assault conviction in Montgomery County, Criminal Docket No. CP-46-CR-007314-2012.

**B. Criminal Docket No. CP-51-CR-0005598-2011.**

In reviewing the Petition and the attachments thereto under the analysis pertaining to claims made pursuant to § 2241, it appears that Petitioner is also trying to enforce “the state’s

obligation to bring him promptly to trial” on the charges lodged against him in Philadelphia County for Criminal Attempt - Murder of the First Degree, Aggravated Assault, Possession of an Instrument of Crime with Intent, Terroristic Threats with Intent to Terrorize Another, Simple Assault, Recklessly Endangering Another Person and Criminal Attempt - Murder. See Criminal Docket No. CP-51-CR-0005598-2011; Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 489-491 (1973).

Petitioner should have filed a separate habeas Petition for any claims he asserts in conjunction with the charges against him in Philadelphia County. Nonetheless, allegations in the current Petition with respect to the Philadelphia County case arise under Rule 600 of the Pennsylvania Rules of Criminal Procedure. This claim is based on a violation of state law and is not cognizable in a federal habeas proceeding. Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Moreover, any Rule 600 claim is also unexhausted.

### **C. Conclusion.**

Because it is evident that Petitioner has not followed the required conduct by exhausting his state court remedies sought in this Petition, this Court should “stay its hand” and dismiss, without prejudice, the instant Petition for Writ of Habeas Corpus as unexhausted to allow Petitioner to exhaust his claims in state court. Walker v. Vaughn, 53 F.3d 609 (3d Cir. 1995). There does not appear to be good cause for failing to present the presently unexhausted claims to the state courts. Petitioner has failed to allege a violation of the United States Constitution, laws or treaties of the United States upon which a grant of federal habeas corpus relief may be premised. Habeas claims must arise under the federal Constitution or federal law. 28 U.S.C. § 2254(a). Violations of state law do not, as a general rule, provide a basis for the

grant of federal habeas relief. Wells v. Petsock, 941 F.2d 253, 256 (3d Cir. 1991)(“review of a federal habeas corpus petition is limited to remedying deprivations of a petitioner’s federal constitutional rights”). Accordingly, the Petition should be denied without prejudice.

**II. CERTIFICATE OF APPEALABILITY.**

When a district court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, a certificate of appealability should issue only if (1) the petition states a valid claim for the denial of a constitutional right, and (2) reasonable jurists would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). In this case, reasonable jurists could not disagree that the claims in the instant Petition are unexhausted.

For all of the above reasons, I make the following:

**RECOMMENDATION**

AND NOW, this 18th day of June, 2014, IT IS RESPECTFULLY RECOMMENDED that the Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241 (Doc. No. 1) should be DENIED without prejudice and DISMISSED without an evidentiary hearing. There is no probable cause to issue a certificate of appealability.

The Petitioner may file objections to this Report and Recommendation. See Local Civ. Rule 72.1. Failure to timely file objections may constitute a waiver of any appellate rights.

BY THE COURT:

/s/ Henry S. Perkin

HENRY S. PERKIN

UNITED STATES MAGISTRATE JUDGE